

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

**ORDER**

CV 04-4057 (DRH) (ARL)

-against-

ISHOPNOMARKUP.COM, INC., et al.,

Defendants.

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**LINDSAY, Magistrate Judge:**

Plaintiff moves by letter application dated November 23, 2005 for an order compelling defendants iShop and Knight to respond to its August 29, 2005 interrogatory and directing defendants iShop, Knight and Yeroush to provide written instructions to each of the attorneys identified during discovery that they are waiving the attorney-client privilege and that the attorneys should respond to otherwise privileged questions put to them if they are called to testify. Alternatively, the plaintiff seeks an order striking the reliance upon the advice of counsel defense pled in the defendants' answer as the fourteenth affirmative defense. Defendants respond to the application by letter dated November 30, 2005 advising that the plaintiff's application is premature in that there has been no good faith effort by the plaintiff to resolve these issues prior to seeking judicial intervention. Defendants further advise that had the plaintiff made such an attempt, it would have learned that the defendants waive the attorney-client privilege with regard to the legal advice referenced in its fourteenth affirmative defense and have accordingly instructed the attorney who provided that advice to answer questions pertaining to that advice.

Rule 2(A)(1) of the undersigned's individual rules provides that parties "must attempt to resolve disputes by conferring in good faith with their adversary. The court interprets good faith to be in-person contact wither by telephone or in person." Accordingly, given the parties' failure to comply with this rule, the plaintiff's application is denied with leave to renew should counsel be unable to resolve these issues after conferring in good faith.

Dated: Central Islip, New York  
December 9, 2005

**SO ORDERED:**

/s/

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ARLENE ROSARIO LINDSAY  
United States Magistrate Judge